

Message

From: Mack, Sara [mack.sara@epa.gov]
Sent: 5/2/2019 8:56:15 PM
To: AO OPA OMR CLIPS [AO_OPA_OMR_CLIPS@epa.gov]
Subject: Daily Clips 5/2

Daily News Clips

May 2, 2019

Administration

[Cambridge Independent: Extinction Rebellion protests US EPA head](#)

[InsideEPA: EPA rejects House request for comments on mine permit review](#)

[PoliticoPro: EPA taps former Colorado utility regulator to run regional office](#)

[Varsity: Trump EPA Chief: Climate change 'not an emergency'](#)

Air

[Bloomberg Environment: EPA Considers Severing Permit Program Changes from Power Plant Rule](#)

[The Conversation: As air pollution increases in some US cities, the Trump administration is weakening clean air regulations](#)

[E&E News: D.C. Circuit weighs EPA shift on power plant permitting](#)

[The Press Herald: EPA extends time to comment on South Portland air emissions settlement](#)

Chemicals

[Bloomberg Environment: Pentagon Denies Pressuring EPA Over Water Cleanup Standards](#)

[Chemical Watch: California to hold synthetic turf study advisory panel](#)

[Chemical Watch: TSCA mercury reporting webinars scheduled](#)

[CNN: The EPA says glyphosate, the main ingredient in Roundup, doesn't cause cancer. Others aren't so sure](#)

[NC State University: EPA to Fund Study on Whether Treating Drinking Water Limits PFAS Exposure](#)

Emissions/Fuel

[CBS Miami 4: EPA Donates \\$200,000 To Replace Diesel-Powered School Buses In Broward](#)

[E&E News: Pa. man convicted for long-running RFS scam](#)

[Ethanol Producer Magazine: OPINION: Are we almost there?](#)

Water

[Bloomberg Environment: Pentagon Denies Pressuring EPA Over Water Cleanup Standards](#)

[E&E News: Judges weigh EPA freeze on power plant discharge limits](#)

[Inside EPA: EAB orders new environmental justice review of contested UIC permit](#)

[InsideEPA: Water Groups Propose Framework For Revised EPA 'Affordability' Policy](#)

[JDSUPRA: Waters of the United States/U.S. EPA Proposed Rule: Arkansas Game and Fish Commission Comments](#)

[WaterWorld: EPA Announces Availability of \\$87M To Improve Drinking Water For Schools, Small and Disadvantaged Communities](#)

Administration

Cambridge Independent

Extinction Rebellion protests US EPA head

<https://www.cambridgeindependent.co.uk/news/extinction-rebellion-protests-us-epa-head-at-cambridge-union-9068966/>

Mike Scialom

Posted: 12:15pm (UK time), May 2, 2019

Protests disrupted proceedings at a Cambridge Union event last night.

On the bill was Andrew Wheeler, head of the US Environmental Agency, whose pro-coal views and policies have outraged climate change campaigners and resulted in his [being described as "one of the most skilled regulatory hitmen the fossil-fuel industry has ever deployed"](#).

Extinction Rebellion supporters held a very vocal demonstration in nearby Park Street - the nearest they were allowed to the Bridge Street home of the world's oldest continuously running debating society - and five protestors inside the chamber staged a highly visual show of bloodied hands before being peaceably escorted from the building by security.

On Park Street a crowd gathered and cars slowed as the activists played and sang loudly enough to be heard inside the Union.

"We're here to protest against Cambridge Union giving a platform to someone whose pro-coal stance as a lobbyist and administrator is well known and poses a huge threat to human health, wildlife and the environment," one of the protestors told the *Cambridge Independent*.

"Andrew Wheeler is complicit in climate change breakdown and the mass extinction of life and his views must be challenged if we're going to ensure our planet's survival," said another. "This is the nearest we can get to the Union because of the heavy security they're put in place there."

Andrew Wheeler became administrator of the Environmental Protection Agency in January. Climate change "is not the greatest crisis", he said at his confirmation hearing, while positioning the US as the ["gold standard for environmental progress"](#). According to [a Guardian report](#), Wheeler was at the time working on rollbacks and regulations that would benefit coal companies. [Until 2017](#), Wheeler represented coal company Murray Energy in his

role as a lobbyist for Faegre Baker Daniels. Murray Energy "wrote the administration a list of rule changes that would help the industry, and they are largely under way", according to a report in the *Guardian*. The *New York Times* has identified 78 environmental rules being discarded by President Trump.

In a recent interview with the Financial Times, the head of the EPA said that there is a "definite possibility" that some US coal mines could be reopened, adding: "I still question the 2C — how do we know that's the tipping point? I do not question that we need to do something, but I think we need to have a healthier, open discussion around some of the scientific questions."

Extinction Rebellion Cambridge commented: "Wheeler's EPA has proposed the rollback of rules to cut carbon pollution from coal power plants, a rollback that would also allow more toxic mercury to be pumped into the air. Under Wheeler's command the EPA has also proposed to undo protections for wetlands and streams that keep water safe to drink. The EPA he leads is also fighting to ensure a brain-damaging and insect-killing chemical, chlorpyrifos, can continue to be sprayed on farmland crops in defiance of scientific warnings."

"Wheeler is a climate denier who has consistently put personal gain and profits above life and planetary health. As a lobbyist for coal company Murray Energy he was paid more than \$3million to lobby against climate regulation and in that role sought to reclassify greenhouse gases as harmless."

"Andrew Wheeler is complicit in climate breakdown and the mass extinction of life and entirely unfit to lead the EPA. People such as Wheeler, who seek to advance an ecocidal agenda and who place financial profit above life, will never be welcome in our city."

A spokesperson for the Union told Varsity: "The Union was able to host one of the world's most powerful people in global climate policy, and the Speakers' Officer and members thoroughly challenged and engaged with his views. We hope to continue upholding free speech within our Chamber, by debating and challenging those that shape the world around us."

Coming soon to the Union? Jared Kushner, senior advisor to the White House and President Trump's son-in-law.

InsideEPA

EPA rejects House request for comments on mine permit review

<https://insideepa.com/daily-feed/epa-rejects-house-request-comments-mine-permit-review>

Staff

Posted: May 2, 2019

EPA is rejecting a top House Democrat's request to release Region 5 staffers' comments criticizing a Minnesota mine permit that political leaders allegedly suppressed, arguing that the comments are deliberative and the subject of an ongoing Freedom of Information act (FOIA) lawsuit where a judge will ultimately rule on disclosure.

In an April 18 letter, Troy Lyons, EPA's associate administrator for congressional and intergovernmental relations, denied a request from Rep. Betty McCollum (D-MN), chair of the appropriations subcommittee that oversees EPA's budget, for staff comments on a Minnesota Pollution Control Agency (MPCA) water permit issued for a controversial copper-nickel mine, arguing that the comments are deliberative and currently the subject of a pending FOIA lawsuit. "As a part of that litigation, the Agency has determined that the document you are seeking is deliberative and should be withheld under Exemption 5 of the FOIA, the deliberative process privilege," Lyons says.

He adds that EPA will wait for the court determine whether the agency's withholding the document is appropriate. "In order to protect the agency's interests and privileges with regard to this document, the EPA will respect the judicial process and intends to let it move forward and await a ruling by the court."

The letter responds to McCollum's April 9 letter to EPA Administrator Andrew Wheeler faulting his response to her questions during an April 2 budget hearing when she sought Region 5 staff's written comments on MPCA's National

Pollutant Discharge Elimination System (NPDES) permit for Polymet's NorthMet copper-nickel mine. In her letter, McCollum reiterated an earlier request for EPA staff comments prepared during Region 5's mine permit review and asserted that Wheeler "intended to obfuscate" in recent testimony to avoid releasing adverse agency comments on the state's draft permit for the mine.

But Lyons defended the EPA administrator's testimony, saying that Wheeler made clear in his answers to McCollum that EPA was seeking to identify documents that respond to advocates' FOIA request, which is currently the subject of litigation.

"Your letter makes unfounded claims that Administrator Wheeler's testimony before the Subcommittee attempted to 'obfuscate' the status of a document requested by the Subcommittee," Lyons says.

McCollum and some environmentalists are seeking release of the staff comments so they can be included as part of the record in their challenge to the permit.

A former EPA lawyer and a Minnesota tribe have charged that political officials suppressed Region 5 staff's written comments on MPCA's draft NPDES permit for the mine and have asked the agency's Office of Inspector General to investigate.

Public Employees for Environmental Responsibility (PEER), a watchdog group representing EPA employees, has also filed a FOIA suit to obtain the comments.

The critics say that withholding of the comments are part of a broader Trump EPA push to streamline reviews of state permitting and improve collaboration with states. For example, Wheeler last year called for EPA to defer to most state decisions but also laid out cases when regulators should intervene to protect human health and the environment.

EPA has also piloted a new framework for reviewing state permits in several regions. Last year, state regulators asked that EPA focus any new process on regions' reviews of states' NPDES permits and targeted Region 5 as an example of why a streamlined policy is needed.

PoliticoPro

EPA taps former Colorado utility regulator to run regional office

<https://subscriber.politicopro.com/article/2019/05/epa-taps-former-colorado-utility-regulator-to-run-regional-office-3181037>

Alex Guillen

Posted: 3:16pm, May 1, 2019

EPA Administrator Andrew Wheeler has picked Gregory Sopkin, a former chairman of the Colorado Public Utilities Commission, to run the agency's Region 8.

Sopkin, who currently works at the Denver law firm Wilkinson Barker Knauer, served as head of the CPUC from 2003-2007 after a stint as an assistant attorney general for Colorado.

His appointment to Region 8, which covers Colorado, Utah, Wyoming, South Dakota, North Dakota and Montana, does not require Senate confirmation.

"I'm going to focus my attention on the most pressing problems, which are Superfund sites and ozone (air quality standard) attainment, and also to make sure states are doing their own jobs where they have primary authority," Sopkin told the Denver Post.

Sopkin was critical of several Obama-era regulations, including the Clean Power Plan, which he said in 2015 amounted to the "socialization of costs" by raising electricity rates.

He has also supported Trump-era rollbacks. For example, he said EPA's proposed revisions to the New Source Review program under its CPP replacement rule "may help marginally economic plants stay online a few years longer," though he acknowledged "uneconomic plants" still face competition from natural gas and renewables.

He replaces Doug Benevento, who left Region 8 in March to become a senior counselor to Wheeler on regional management and state affairs.

Varsity

Trump EPA Chief: Climate change 'not an emergency'

<https://www.varsity.co.uk/news/17466>

Raphael Korber-Hoffman, Joe Cook

Posted: 12:04pm (UK time), May 2, 2019

Speaking to *Varsity* at the Cambridge Union, the top US environment official played down the urgency of tackling climate change, spoke on his lobbyist past, and if he would meet Greta Thunberg

Arriving in the press room flanked by secret service and his deputy chief of staff, Andrew Wheeler, Administrator of the US EPA, introduces himself by handshake to all in the room before relaxing into a seat at the head of the table.

The Environmental Protection Agency, of which Wheeler has been Administrator since February 2019, having been acting Administrator since July 2018, was set up by Nixon in 1970. It was created in response to growing concerns about the impact of humans on the environment. It is responsible for regulating and enforcing environmental protection standards, as well as working to reduce pollution and conduct research into environmental issues.

Wheeler begins our discussion by emphasising that he is not a climate change denier: “do humans contribute to the climate? Yes ... Has the climate always changed? Yes.” He instead insists that there are more important issues for the EPA to be focussing on.

Wheeler states “no I would not say it's an emergency”

Since being appointed as the replacement to Scott Pruitt, his scandal-ridden predecessor who denied that humans were responsible for climate change, Wheeler has made clean water his priority.

Wheeler makes the case that the tools required to tackle climate change are not as available today as those tools necessary to ensure water safety. Quoting a UN statistic that 1000 children die a day from a lack of access to clean drinking water, Wheeler makes a convincing argument that there is a need for the United States to play a greater role in ensuring the global provision of clean drinking water. However, he places this against the wider issue of climate change, which he would rate “about an 8 or 9” on “a scale of one to ten” when it comes to pressing issues.

Throughout his time at the Union, Wheeler accepts that climate change “is a concern” but that it must be set against other problems. It appears strange that someone so concerned for those seeking clean water would not place climate change alongside it at the top of their list of priorities. We make little progress over the course of our interview in ascertaining why the Agency can't go all out on tackling both.

After a rattle through his views on how all energy sources from coal to solar have a downside, including a detour onto his views on wind turbines and bird strikes, we move to the political aspects of climate discourse.

With MPs voting to declare a “climate emergency” on the day we meet Wheeler, we ask him whether he would characterise global warming in this way. Initially he instantly pivots, yet again, to water safety: “I think a bigger emergency is water.”

However when we press him on this, Wheeler states “no I would not say it's an emergency” - a comment which evokes visible concern from his deputy chief of staff and communications adviser.

Despite Wheeler's Union Jack socks, it is clear that views on the urgency of climate change across the pond are to be becoming ever more divergent from those in the UK. Michael Gove, Wheeler's counterpart who he will meet at the G7 summit for environment ministers, this weekend, proudly proclaimed to the House of Commons yesterday that the British government “recognise that the situation is an emergency”.

Whilst not denying climate change, Wheeler simply denies it the urgency that the scientific community and those already affected demand. In this regard, his approach is more difficult to directly contradict with facts or stats, but it is clear why Trump, a man with a history of climate change denial, nominated him to his position.

We mention the comments of Greta Thunberg, the figurehead of the new movement focused on treating climate change as an emergency, that Trump was “obviously ... not listening to the science and to what [climate activists] have to say, so I wouldn't be able to change his mind.” Despite not initially recognising the name, after showing him a picture on our laptop, he claims he does know who she is and that he would “absolutely” be willing to meet her, “I will meet with just about anybody”.

Much has been made in the media of Wheeler's past as a coal lobbyist - is he a ‘wheeler and dealer’, one could ask - something which Wheeler bemoans. He suggests that those writing pieces about his coal past ignore the fact that during his time as a lobbyist he represented a variety of different sectors across the energy industry.

Nevertheless, and despite his insistence that his years working in federal government should not be discounted, Wheeler did move straight from a eight year stint lobbying on behalf of coal companies to being in charge of regulating them. However, despite stumbling over his words, looking to his communications officer for support, he is clear he doesn't “believe lobbying is a problem, as long as it's disclosed and it's up front.”

Campaigning in 2016, Wheeler's current boss Donald Trump stood on a platform of ‘draining the swamp’ of self-serving lobbyists in Washington. In a slip of the tongue trying to ask Wheeler his views on this, one of us asks him whether he is part of “the swamp or the drainage”. Amid laughter in the room, Wheeler says he is neither, rather “I'm part of the solution.” The EPA administrator is keen on solutions, that's for sure, but the issue running unresolved through our interview is an agreement on what the main problems are.

Wheeler maintains that the two main inequalities which concern him and his agency are access to electricity and clean water. Yet, as we point out, climate change has a disproportionately great impact upon developing nations, especially those in low-lying geographical areas.

Continuing to argue that inequalities in electricity and water access are more important, we raise the example of the Maldives, which is predicted to be entirely underwater by 2100. Would electricity access be a more pressing concern for the Maldives too? Accusing us of putting words into his mouth, Wheeler offers a fudged response, referencing “adaptations ... that are in many instances cheaper and easier to implement than reducing CO2.”

As time runs out both for the planet and our interview, Wheeler leaves the room to enter the din of the Union chamber. The noise of Extinction Rebellion activists outside indicates that they are not impressed by the man who identifies himself as neither swamp nor drainage.

Bloomberg Environment

EPA Considers Severing Permit Program Changes from Power Plant Rule

<https://news.bloombergenvironment.com/environment-and-energy/epa-considers-severing-permit-program-changes-from-power-plant-rule>

Amena Saiyid

Posted: 2:42pm, May 2, 2019

- EPA could separate new source review permit changes from its rewrite of Obama-era carbon limits, according to sources
- Sources say the move could make the rewrite less vulnerable to litigation

The EPA is considering separating major air permitting program changes from its rewrite of the Obama-era carbon dioxide limits for existing power plants, according to sources familiar with the rulemaking.

Such a move would likely strengthen the agency's hand in courts when it has to defend the final version of the rewrite, known as the Affordable Clean Energy (ACE) rule, which could be issued as early as June.

The Environmental Protection Agency has prioritized changing the Clean Air Act's pollution permitting program, known as New Source Review. It wants to allow power plants and other industrial plants to improve their efficiency without having to install costly controls when they expand or add new units that increase nitrogen oxide and sulfur dioxide pollution.

The agency tucked changes to the pollution permitting program in its broader [August 2018 proposal](#) to rewrite the Obama-era climate rule.

In that plan, the EPA proposed changing the way emissions increases are calculated when deciding whether power plant efficiency projects trigger additional pollution controls under New Source Review.

But at the time, it also considered severing the permitting changes from the broader plan to protect it legally. This is the option sources say the EPA is considering.

"Nothing is set in stone, but there is a very good chance that the New Source Review provision will be severed and treated separately," Thomas Lorenzen, a partner in the Washington, D.C. office of Crowell & Moring LLP, told Bloomberg Environment.

Lorenzen, a former Justice Department attorney, said the EPA action "certainly would simplify defense of the ACE rule, review of which would then be limited to what is the 'best system of emission reduction' for existing power plants."

For instance, the EPA is seeking to allow utilities to calculate emission increases on an hourly rate rather than an annual basis. This particular change has been challenged by environmental groups because an hourly rate calculation allows more pollution to be released.

Rule Under Review

At least one more source who confers with EPA officials on a regular basis also confirmed the EPA will likely separate the air permitting changes from the broader rule. This source spoke on condition of anonymity.

The EPA didn't respond to a request for comment on what action it is taking. The agency sent the Affordable Clean

Energy rule to the White House Office of Management and Budget for review April 26, which is the last step before it is released to the public.

In February, EPA's top air official, Bill Wehrum, told reporters that the agency hadn't yet decided whether to split the two regulatory efforts or to keep them together.

"We wanted to give ourselves the flexibility that if, for whatever reason one piece of the package slowed down, we'd be able to split them apart and do them in pieces rather than one big clump," Wehrum said Feb. 12 on the sidelines of the National Association of Regulatory Utility Commissioners winter policy meeting in Washington, D.C.

Environmental groups and several states have sharply criticized the proposed New Source Review changes, arguing they will lead to higher air pollution. But utilities and other industry groups have largely backed the permitting provisions as necessary for them to be able to take full advantage of the efficiency upgrades that the EPA's proposed Affordable Clean Energy rule encourages.

"I would expect that EPA will separate these proposals consistent with the comments the agency has received," said Lorenzen, whose last post at the Justice Department was assistant chief for the environmental defense section until his departure in 2013.

—With assistance from Abby Smith.

The Conversation

As air pollution increases in some US cities, the Trump administration is weakening clean air regulations

<https://theconversation.com/as-air-pollution-increases-in-some-us-cities-the-trump-administration-is-weakening-clean-air-regulations-115975>

Jason West, Barbara Turpin

Posted: May 2, 2019

Air pollution kills. In the United States, 1 of every 25 deaths occurs prematurely because of exposure to outdoor air pollution.

It kills more Americans than all transportation accidents and gun shootings combined. More than diabetes or than breast cancer plus prostate cancer. More than Parkinson's disease plus leukemia plus HIV/AIDS. And unlike diabetes or Parkinson's, deaths from air pollution are entirely preventable.

We study air pollution and its interactions with climate change and human health. In our view, this problem does not receive the attention it deserves as a public health threat. No death certificate lists air pollution as the cause of death – rather, it is considered a risk factor, like smoking or obesity. But it influences several of the most important causes of death: heart attacks, strokes, chronic obstructive pulmonary disease and lung cancer.

According to the American Lung Association's latest "State of the Air" report, about 43% of Americans – 140 million people – live in counties with unhealthy air. The report also shows that although air quality has improved since 1990, this trend may be starting to erode. In 2015-2017, more U.S. cities had days with high ozone or fine particle pollution than in 2014-2016. Whether conditions worsen or improve in the next few years depends strongly on decisions by President Trump and Environmental Protection Agency Administrator Andrew Wheeler

Today's #AQI is code Orange, with particle pollution levels (PM2.5) in Susquehanna Valley, PA; Unhealthy for Sensitive Groups. People with heart or lung disease, older adults, and children should reduce prolonged or heavy exertion.
<https://go.usa.gov/xErwB>

Progress through science-based regulation

The long-term news is good: Since 1990, U.S. air quality has improved. Controlling for population growth, air pollution-related deaths decreased by about 30% from 1990 to 2010. Average life expectancy has likely increased by several months, just from cleaner air.

These improvements result directly from emission controls on power plants, factories, motor vehicles and other sources, driven mainly by EPA regulations implementing the 1970 Clean Air Act and its 1990 Amendments. These programs were supported by the development of new control technologies and different energy sources – for example, replacing dirtier coal-fired electricity with power produced from natural gas and wind.

A central requirement in the Clean Air Act directs the EPA to set National Ambient Air Quality Standards based on the best available science. EPA's programs have been incredibly successful in improving air quality and reducing related deaths.

Weakening air pollution controls

Despite this strong record, Trump and Wheeler are now taking what we and many other critics view as unprecedented steps to challenge or weaken Clean Air Act regulations. President Trump claims to favor clean air, but Wheeler and his predecessor, Scott Pruitt, have weakened enforcement of air quality regulations and removed emission controls on oil and gas drilling sites.

Trump's decisions to pull out of the Paris Climate Agreement, weaken proposed regulations on CO2 from power plants and roll back fuel efficiency standards for new motor vehicles are also harmful. These actions don't just hamper efforts to address climate change – they also slow transitions **from coal** to less-polluting electricity sources, and to cleaner, more efficient vehicles. This protracts air quality problems and harms health, particularly for children and the elderly.

Smoke from intense wildfires created unhealthy air pollution across much of California in November 2018.

Politicizing science

The Environmental Protection Agency is also weakening the scientific foundation for air quality standards. Under the Clean Air Act, the agency is required to comprehensively review the science characterizing air pollutants and their effects on health and welfare every five years, including epidemiologic studies that quantify the impact of pollutants on public health.

EPA's Clean Air Scientific Advisory Committee and its subsidiary panels oversee this review and recommend new standards, which are ultimately set by the administrator. However, this winter the agency dismissed a 20-member panel of scientists specializing in fine particle air pollution, including one of us (Barbara Turpin), and changed the advisory committee's membership so that it now includes only one academic scientist and no epidemiologist.

As such, the new committee lacks expertise to review the science. And it is being held to expedited timetables that appear to be motivated to allow new standards to be set during the lame-duck period after the 2020 election.

Further, the new committee is advocating a new way of determining which epidemiology studies can be included in the review. Many of these studies have shown that adverse health effects occur more frequently in populations that are exposed to higher air pollution. However, while they find associations between air pollution and health, most do not go further to test for whether air pollution can be identified as the cause.

But when all relevant studies finding these associations are reviewed together, health scientists and the EPA have repeatedly determined that air pollution causes health effects.

Now the new CASAC chair proposes to consider only studies that directly test for causation, using specific statistical techniques that are not widely used. This change could disqualify many of the most important studies that link air pollution with health impacts.

Still another proposed change would preclude considering health studies if they do not make their underlying data publicly available. Since many air pollution epidemiology studies use health data from individuals that are protected by privacy agreements, this shift also seems likely to exclude important studies.

We do not believe there is a scientific justification for these proposed changes, which are not required in other fields of medicine and public health.

Independent science supports sound decisions

EPA leaders have argued for these changes based on efficiency and transparency. But we see them as an unprecedented and politically motivated attack on the scientific foundation underlying public health protection. Past presidents have also sought to roll back environmental regulations. But every administration since the agency was created in 1970 has based its air quality decisions on independent scientific input.

Administrator Wheeler has the discretion not to follow scientific advice in setting air quality standards. But he does not have the power to determine scientific truth or consensus. As the American Lung Association report makes clear, it would be a mistake to take 30 years of air quality gains for granted – especially when political leaders are pushing in the opposite direction.

E&E News

D.C. Circuit weighs EPA shift on power plant permitting

<https://www.eenews.net/greenwire/2019/05/02/stories/1060259531>

Ellen M. Gilmer

Posted: May 2, 2019

A panel of federal judges worked through thorny questions about the Clean Air Act and court venue during oral arguments yesterday about a significant policy shift EPA quietly adopted in 2017.

At issue before the U.S. Court of Appeals for the District of Columbia Circuit: EPA's decision to change its long-standing approach to reviewing state-issued operating permits.

Since 1999, EPA has asserted authority to object to state-issued Title V permits when it decides the permit holder classified as a minor source has made major modifications to its facility without going through the requisite "prevention of significant deterioration" process to consider impacts and ways to control pollution.

In an otherwise routine 2017 decision related to a Utah power plant, EPA changed course, saying it would no longer "second guess" state decisions.

The Sierra Club sued, claiming the change allows EPA and states to ignore evidence that permitted facilities should have been subject to more strenuous requirements (*Greenwire*, Feb. 7, 2018).

"EPA's position is: The question is answered; the door is closed," attorney Keri Powell, representing the Sierra Club, told the D.C. Circuit yesterday.

The three-judge panel spent much of the session grappling with whether they sat on the right court to hear the case. Generally speaking, challenges to permit decisions go to regional appellate courts, while challenges to nationwide rules go to the D.C. Circuit.

EPA and the Sierra Club disagree over which court's jurisdiction is triggered by EPA's unveiling of the new interpretation within the Utah permitting decision.

Justice Department lawyer David Kaplan, representing EPA, maintained that the shift in interpretation did not amount to a rule change. Judge David Tatel, a Clinton appointee, pushed back and urged EPA to acknowledge the broad impact of the order.

"This order says that this is the agency's approach going forward," he said. "How can you say it's not binding in the future?"

Powell, the Sierra Club lawyer, argued that those broad impacts are why the D.C. Circuit is the appropriate venue for the litigation.

"What sets this order apart from any other Title V order is that it expressly applies a new rule to all permitting actions," she told Judge Judith Rogers, a Clinton appointee.

The Sierra Club filed a separate lawsuit in the 10th U.S. Circuit Court of Appeals just in case. Those proceedings are on hold pending the outcome in the D.C. Circuit.

Judge Nina Pillard, an Obama appointee, also sat on the panel.

The case marks the second time this year that the D.C. Circuit has heard litigation over Trump officials' decision to kill a long-standing EPA policy.

Last month, the court considered whether air chief Bill Wehrum overstepped when he issued a memo to reverse what's known as the "once in, always in" policy for air toxics standards (*Greenwire*, April 1).

The Press Herald

EPA extends time to comment on South Portland air emissions settlement

<https://www.pressherald.com/2019/05/02/epa-extends-comment-period-on-proposed-settlement-with-global-partners/>

Kelley Bouchard

Posted: 3:16pm, May 2, 2019

City officials sought an extension after residents complained that the EPA failed to notify the city about alleged Clean Air Act violations or to include the city in negotiating a settlement with Global Partners LP.

SOUTH PORTLAND — City residents and others will have two additional months to comment on a controversial proposed settlement between the U.S. Environmental Protection Agency and Global Partners LP over alleged violations of the federal Clean Air Act at its petroleum storage facility on the Fore River.

The deadline to submit comment to the U.S. Department of Justice has been extended from May 1 to July 1, according to a notice published Thursday in the Federal Register.

The EPA filed a lawsuit against Global on March 25, charging the Massachusetts-based company with emitting higher levels of volatile organic compounds, or VOCs, than allowed under its emissions license from the Maine Department of Environmental Protection.

City officials sought an extension after residents complained that the EPA failed to notify the city about alleged air quality violations or to include the city in negotiating a settlement that many say is insufficient.

This story will be updated.

Chemicals

Bloomberg Environment

Pentagon Denies Pressuring EPA Over Water Cleanup Standards

<https://news.bloombergenvironment.com/environment-and-energy/pentagon-denies-pressuring-epa-over-water-cleanup-standards>

David Schultz

Posted: 6:10pm, May 1, 2019

- Defense officials tell Congress they didn't interfere in EPA's standard-setting
- Agency's recent guidelines address how to clean fluorinated chemicals out of groundwater

The Pentagon's top officials in charge of military installations denied they are interfering with the EPA's efforts to address a group of ubiquitous perfluorinated chemicals contaminating groundwater.

"There has been tremendous discussion in the media that DoD was trying to drive to a different standard than what EPA was asking for," Robert McMahon, assistant secretary of Defense for sustainment, said at a May 1 congressional hearing. "I will tell you categorically that DoD has not been."

McMahon added that the Pentagon supports the numerical threshold that the Environmental Protection Agency set for per- and polyfluoroalkyl substances (PFAS) in a draft [guidance](#) it released last week for public comment. The limit the agency ultimately sets may determine how costly it will be to clean up groundwater.

'No Discussions'

PFAS are a common ingredient in firefighting foams that have been used for years during training exercises at many military bases. The chemicals, which are linked to numerous health problems, biodegrade slowly and have seeped into groundwater supplies on and near dozens of bases.

The Pentagon has estimated that it will be liable for approximately \$2 billion in cleanup costs due to PFAS, but that number could grow depending on how stringent the EPA sets its standards for the substances in groundwater.

McMahon and other top Pentagon officials told a House Armed Services Committee that they are leaving the standard-setting up to the environmental experts.

"I've had no discussions with anyone at the EPA and I don't intend to," Alex Beehler, assistant secretary of the Army for installations, energy, and environment, said.

Todd Mellon, the acting principal deputy assistant secretary of the Navy for energy, installations, and environment, added that it's "ultimately EPA's call to set what those standards are. The Navy is fully on board."

Doug Lamborn (R-Colo.), the top Republican on the House Armed Services' Subcommittee on Readiness, said he accepted the officials' answers and "didn't have any reason to question that."

Lamborn's district contains Fountain and Security, two civilian towns located near a military base that recently discovered very high levels of PFAS in their drinking water supplies. He told Bloomberg Environment that he's pleased with the Pentagon's progress on addressing this issue, especially its work toward looking for a replacement for PFAS.

Chemical Watch

California to hold synthetic turf study advisory panel

<https://chemicalwatch.com/77051/california-to-hold-synthetic-turf-study-advisory-panel-meeting?q=EPA>

Staff

Posted: May 2, 2019

California's Office of Environmental Health Hazard Assessment (Oehha) will hold a meeting of its synthetic turf scientific advisory panel on 31 May.

The panel is intended to provide scientific advice on the agency's ongoing study examining the potential health impacts associated with the use of synthetic turf and playground mats made of crumb rubber.

It has had three previous meetings to advise on the study plans, data interpretation and how to report results.

The panel meeting, which will be open to the public and webcast, will include an opportunity for public comment.

Meanwhile, at the federal level, work continues on a multi-agency study on the safety of recycled rubber tyre crumbs. The US EPA and the Centers for Disease Control and Prevention/Agency for Toxic Substances and Disease Registry (CDC/ATSDR) plan to release for public review later this year the first part of their report, which summarises a crumb rubber characterisation study.

Information on their ongoing biomonitoring study, as well as information collected under an exposure characterisation study, will be released at a later date.

Chemical Watch

TSCA mercury reporting webinars scheduled

<https://chemicalwatch.com/77085/tsca-mercury-reporting-webinars-scheduled>

Staff

Posted: May 2, 2019

The US EPA has announced two webinars on the TSCA mercury inventory reporting rule.

The final reporting rule, which was put in place pursuant to 2016 amendments to TSCA, requires manufactures and importers of mercury or mercury-added products, as well as any company that intentionally uses mercury in a manufacturing process, to submit certain information.

The first webinar on 21 May will cover basic requirements, such as who must report and what information needs to be submitted.

The second webinar on 23 May will address how to use the online MER application. The agency also published a set of tools earlier this year to assist regulated parties in reporting.

Reports for 2018 activities must be filed through the online Mercury Electronic Reporting (MER) application – housed under the Central Data Exchange (CDX) – by 1 July.

The collected information will inform an updated mercury inventory, set to be released next year. An initial inventory was published in 2017 based on readily available, previously published data.

The Lautenberg Act instructs the agency to publish a new inventory every three years. This will be used to inform policy decisions and to help comply with reporting requirements under the international Minamata Convention on Mercury.

CNN

The EPA says glyphosate, the main ingredient in Roundup, doesn't cause cancer. Others aren't so sure

<https://www.cnn.com/2019/05/01/health/epa-says-glyphosate-is-safe/index.html>

Holly Yan

Posted: 5:11pm, May 1, 2019

The fierce debate over whether glyphosate can cause cancer just got a big endorsement of safety from the US Environmental Protection Agency.

"EPA continues to find that there are no risks to public health when glyphosate is used in accordance with its current label and that glyphosate is not a carcinogen," the agency said Tuesday.

The announcement comes after two high-profile court cases in which cancer patients claimed Roundup, a popular weedkiller containing glyphosate, caused their non-Hodgkin's lymphoma.

In both cases, jurors sided with the patients and said Monsanto, the maker of Roundup, should pay them tens of millions of dollars in damages.

Fallout from those verdicts -- plus thousands of similar lawsuits against Monsanto -- have dealt a huge financial blow to Monsanto's parent company, Bayer.

Roundup cancer verdicts could cost Bayer billions

But the EPA's announcement saying glyphosate is still safe was a boon for Bayer, which has insisted the same all along.

"Bayer firmly believes that the science supports the safety of glyphosate-based herbicides, which are some of the most thoroughly studied products of their kind, and is pleased that the regulators tasked with assessing this extensive body of science continue to reach favorable conclusions," the company said.

But that doesn't mean all concerns have been alleviated.

Why the debate keeps brewing

Cancer patients who used Roundup started suing Monsanto after the World Health Organization's International Agency for Research on Cancer said glyphosate is "probably carcinogenic to humans."

"For the herbicide glyphosate, there was limited evidence of carcinogenicity in humans for non-Hodgkin lymphoma," IARC said in a 2015 report.

But Monsanto said more than 800 studies have demonstrated glyphosate's safety, including studies conducted internationally.

"In fact, since IARC classified glyphosate, regulatory authorities in the United States, Europe, Canada, Japan, New Zealand and Australia have publicly reaffirmed that glyphosate does not cause cancer," a spokeswoman said.

Researchers from the University of Washington conducted an analysis and found that glyphosate raises the risk of cancer to those exposed to it by 41%,

"All of the meta-analyses conducted to date, including our own, consistently report the same key finding: exposure to GBHs (glyphosate-based herbicides) are associated with an increased risk of NHL," or non-Hodgkin's lymphoma, the authors wrote in a study published in the journal Mutation Research.

Timothy Litzenburg, who represented the first cancer patient to take Monsanto to trial, said the problem isn't just glyphosate, it's Roundup as a product.

"We are not alleging that our clients got cancer from glyphosate alone," he said. "Roundup contains animal fats and other ingredients that increase the carcinogenicity of the glyphosate."

He said the EPA doesn't require sufficient testing, "particularly of the formulated product," Roundup.

There also are concerns about whether Monsanto has had undue influence over regulators.

In a 2015 internal company email, a Monsanto executive wrote that an EPA official at the time offered to help stop another agency's review of glyphosate, saying "If I can kill this I should get a medal."

But a Monsanto spokeswoman said the company has never paid, given gifts to or done anything else to curry favor with anyone from the EPA.

Why glyphosate is the most widely used herbicide in the world

Supporters say glyphosate is critical for global farming and helps minimize carbon emissions.

"Without glyphosate, farmers would need to rely on plowing (or what is known as tillage), a weed control technique that turns over the soil," Bayer said.

"Tillage typically requires the use of heavy farm machinery, which increases fuel consumption and causes soil disruption, both of which release greenhouse gases, like CO₂, that contribute to climate change."

Disrupting the soil can also cause erosion, which would let vital nutrients be washed away with the soil, the company said.

"Glyphosate-based herbicides enable farmers to control weeds with little or no tillage, which dramatically reduces the carbon footprint and helps farmers maintain healthier soil," Bayer said.

US Secretary of Agriculture Sonny Perdue praised the EPA's announcement that glyphosate doesn't cause cancer.

"If we are going to feed 10 billion people by 2050, we are going to need all the tools at our disposal, which includes the use of glyphosate," he said.

NC State University

EPA to Fund Study on Whether Treating Drinking Water Limits PFAS Exposure

<https://news.ncsu.edu/2019/05/epa-pfas-study/>

Tracey Peake

Posted: May 2, 2019

Researchers from three states currently grappling with water contaminated with poly- and perfluoroalkyl substances (PFAS) like GenX are joining forces to tackle one of the biggest remaining questions facing communities that have found the toxic chemicals used in stain-resistant carpets, firefighting foam, and the production of nonstick cookware lurking in their water supply.

When PFAS contaminate a drinking water source, is it enough to just treat the water people drink? Or do state and local agencies need to do more to limit residents' exposure?

A new research project set to receive \$1.96 million from the U.S. Environmental Protection Agency hopes to answer those questions. In doing so, researchers will develop data that can be used by state and local agencies to reduce exposure to the harmful chemicals in communities across the nation.

Led by Chris Higgins, a PFAS expert and professor of civil and environmental engineering at Colorado School of Mines, the research team includes scientists and engineers from North Carolina State University, Duke University, Michigan State University and the Colorado School of Public Health at the University of Colorado Anschutz Medical Campus. Their efforts will focus on their three home states, each of which has communities significantly impacted by PFAS-contaminated drinking water.

In North Carolina, the source of the PFAS discovered in the Cape Fear River – the main drinking water source for the city of Wilmington – was a manufacturing plant upstream emitting PFAS in its fluorochemical production.

Among the specific questions that researchers plan to answer is to what extent PFAS accumulate in locally harvested foods like vegetables, fish and eggs, and more broadly, the relative contribution of drinking water and local foods to PFAS exposure in impacted communities. Further, the team will collect needed data to enable predictions of how quickly PFASs will migrate, particularly through soil into groundwater.

"In North Carolina, recently identified PFAS, such as GenX and Nafion byproducts, have been emitted into the air and water for decades. For some of the compounds, nothing is known about their migration through soil into groundwater and their uptake by plants and animals that serve as sources of food," said co-PI Detlef Knappe, S. James Ellen Distinguished Professor of Civil, Construction, and Environmental Engineering at NC State. "This study will allow us to develop information that will help answer important questions."

PFAS exposure studies funded by the National Institutes of Health are already underway in Colorado and North Carolina, and the new project will leverage those existing biomonitoring cohorts, led by co-PIs John Adgate, chair of ColoradoSPH's Department of Environmental and Occupational Health, and Jane Hoppin, associate professor in the Department of Biological Sciences at NC State.

"PFAS-UNITEDD: Poly- and Perfluoroalkyl Substance – U.S National Investigation of Transport and Exposure from Drinking Water and Diet" is being funded through the EPA National Center for Environmental Research. The North Carolina Policy Collaboratory's Challenge Grant fund, provided by the North Carolina General Assembly, is also contributing a \$262,500 cash match, with additional in-kind contributions coming from industry partners Jacobs, CDM Smith and others.

Emissions/Fuel

CBS Miami 4

EPA Donates \$200,000 To Replace Diesel-Powered School Buses In Broward

<https://miami.cbslocal.com/2019/05/02/epa-donates-200000-to-replace-diesel-powered-school-buses-in-broward/>

Staff

Posted: 12:45pm, May 2, 2019

MIAMI (CBSMiami) – Public school transportation in Broward County just got more eco-friendly as the U.S. Environmental Protection Agency awarded the county's school board \$200,000 to help replace 20 old diesel-powered school buses.

With the new buses, the school district and the EPA are aiming to cut down on air pollutants from the diesel engines of older models that include particulate matter and nitrogen oxides.

The EPA says these pollutants contribute to the development of dangerous health issues like asthma and lung damage.

According to the agency, the exhaust on these older school buses are harmful to everyone, but especially to youngsters, whose lungs are not completely developed.

Replacing the buses will help make the breathing air near children at schools, bus stops and on the buses cleaner.

"Children's health is a top priority for EPA, and these grants will help provide cleaner air and a healthier ride to and from school for America's children," said Andrew Wheeler, an administrator for the EPA.

Buses being replaced must have engine models from 2006 and older to qualify for replacement and rebates can be anywhere between \$15,000 and \$20,000, depending on how big the buses are.

The donation comes as part of the government agency's funding for the Diesel Emissions Reduction Act, which is part of a law passed in 2005 to help federal and state agencies improve their diesel-run vehicles.

E&E News**Pa. man convicted for long-running RFS scam**

<https://www.eenews.net/greenwire/stories/1060259409/search?keyword=EPA>

Ellen Gilmer

Posted: May 2, 2019

A federal jury convicted a Pennsylvania man yesterday for a biofuels scam that went on for five years.

David Dunham Jr. was convicted of wire fraud, obstruction of justice, conspiracy to defraud the United States and other crimes after a four-week trial.

Federal investigators say Dunham claimed to sell biofuels that he never actually had. He then acquired renewable energy credits from government agencies and sold them for more than \$50 million in profits.

He allegedly operated the scheme from 2010 to 2015 through his business, Smarter Fuels, and another individual, Ralph Tommaso, who previously pleaded guilty to related crimes.

"Today's conviction sends a clear message to any future fraudsters out there: crime does not pay. Especially when that crime involves defrauding American customers and multiple federal agencies," Jeffrey Clark, head of the Justice Department's environment division, said in a statement yesterday.

"When the defendant knowingly cheated a federal government program aimed at energy conservation, he gave himself an unfair advantage over his competitors and stole millions of dollars from the American taxpayer in the process," Clark said.

The government is still seeking \$1.7 million in cheated revenue from Dunham, along with several pieces of property.

Jessica Taylor, director of EPA's Criminal Investigation Division, said the conviction "should send a clear signal that EPA and our law enforcement partners are committed to protecting the integrity of the Energy Independence and Security Act of 2007."

EPA, DOJ, the Department of Agriculture and other agencies have been dealing with abuse of the renewable fuel standard (RFS) program since its inception, trying to stay ahead of companies and individuals who game the system (*Greenwire*, Sept. 27, 2018).

Gas royalties

In separate legal action this week, an oil and gas company and its owners will pay millions of dollars to settle claims that it shorted the federal government on royalty payments.

B. Charles Rogers Gas Ltd. — which marketed natural gas from producers in the San Juan Basin in New Mexico and Colorado — agreed to pay nearly \$3.6 million after DOJ alleged that the company falsified transaction statements to underreport the volume of natural gas liquids it bought.

Federal investigators say many of the producers operated on federal lands, meaning the underreported volumes resulted in lower royalty payments to the United States, in violation of the False Claims Act.

"Businesses that underpay for our nation's natural resources must be held to account," Erin Nealy Cox, U.S. attorney for the Northern District of Texas, said in a statement.

The Interior Department's Office of Inspector General helped investigate the case.

Ethanol Producer Magazine

OPINION: Are we almost there?

<http://ethanolproducer.com/articles/16162/opinion-are-we-almost-there>

Ron Lamberty

Posted: May 2, 2019

Ah, the summer driving season.

Our minds drift back to a time when we (barely) helped our parents load up the Vista Cruiser, (including all the stuff tied to the roof rack), slid a cooler filled with snacks and ice-cold sodas in the “way back” and Dad ordered everyone to go to the bathroom before they got in the car. Everyone said they already went, but none of us did, and we loaded in the car and were on the road within a few minutes of the projected start time on Dad’s minute-by-minute itinerary.

Station wagons didn’t have entertainment consoles back in the day, so we passed the time singing songs, playing “I Spy” and that billboard alphabet game, or did puzzles in one of the books Mom brought along. And only the newest, top-of-the-line cars had air conditioning back then, so Dad joked about having “475 AC” in the wagon—four windows and 75 miles an hour. Hilarious! The time flew by, we all got nice, long naps, and before we knew it, we reached our destination, and memories were made.

Except it never really went like that. We had to unpack and repack because everyone had twice as much stuff as they needed, and there was always something wrong with the roof rack or the storage thing-a-ma-bob that went up there. Even if it fit and stayed attached, there was a huge rainstorm and we discovered the thing leaked on top, but the bottom was watertight, creating a kind of clothing and accessories stew in the hot sun. The ice in the cooler melted instantly, soaking the sandwiches and crackers, and we tried to drink warm cans of Mr. Pepper, Hillside Dew, or Cola. We couldn’t sing or play games because we couldn’t hear each other with the windows down, and the puzzle books were either made for your 5-year-old little brother, or you had to know some French to answer some of the clues. Your sweaty back stuck to the vinyl seats, and Dad blew a gasket when kids repeatedly had to go to the bathroom or whined and asked, “Are we almost theeeere?”

It’s been kind of the same with E15.

We went after E15 instead of E20, because the UL specs for nearly every piece of fueling equipment said they were good with “up to 15 percent alcohol.” Station owners would love to put the stuff in, because it would give them a higher-octane fuel to sell at a lower price, which is what their customers really want. EPA will proudly announce each year’s RFS volumes along with reports of improved air quality, automakers won’t mind because they also test using higher ethanol blends, and oil companies will quickly make adjustments to sell E15, because it makes RFS compliance a snap.

It never really went like that, but we are almost there. After years of whining and/or misinformation from oil companies, automakers, congress, weed-whacker engine makers, and even the friggin’ U.S. EPA, we are almost there. Widespread E15 availability is just down the road a ways, and hopefully, it will be just like those road trips of our youth. After all those do-overs, unscheduled stops, breakdowns, detours, unfriendly and uncooperative fellow travelers, and bouts of road rage, when we reached our destination, we had a blast. It was awesome! Yeah, the trip was a nightmare, but even that had its benefits. It makes for great storytelling, and in retrospect, it wasn’t so bad. Once we get there, hopefully we’ll realize why we had to take that long journey, station owners and drivers will get better fuel for less money, and over time, we’ll all try to remember what all the fighting was about.

Water

Bloomberg Environment

Pentagon Denies Pressuring EPA Over Water Cleanup Standards

<https://news.bloombergenvironment.com/environment-and-energy/pentagon-denies-pressuring-epa-over-water-cleanup-standards>

David Schultz

Posted: 6:10pm, May 1, 2019

- Defense officials tell Congress they didn't interfere in EPA's standard-setting
- Agency's recent guidelines address how to clean fluorinated chemicals out of groundwater

The Pentagon's top officials in charge of military installations denied they are interfering with the EPA's efforts to address a group of ubiquitous perfluorinated chemicals contaminating groundwater.

"There has been tremendous discussion in the media that DoD was trying to drive to a different standard than what EPA was asking for," Robert McMahon, assistant secretary of Defense for sustainment, said at a May 1 congressional hearing. "I will tell you categorically that DoD has not been."

McMahon added that the Pentagon supports the numerical threshold that the Environmental Protection Agency set for per- and polyfluoroalkyl substances (PFAS) in a draft [guidance](#) it released last week for public comment. The limit the agency ultimately sets may determine how costly it will be to clean up groundwater.

'No Discussions'

PFAS are a common ingredient in firefighting foams that have been used for years during training exercises at many military bases. The chemicals, which are linked to numerous health problems, biodegrade slowly and have seeped into groundwater supplies on and near dozens of bases.

The Pentagon has estimated that it will be liable for approximately \$2 billion in cleanup costs due to PFAS, but that number could grow depending on how stringent the EPA sets its standards for the substances in groundwater.

McMahon and other top Pentagon officials told a House Armed Services Committee that they are leaving the standard-setting up to the environmental experts.

"I've had no discussions with anyone at the EPA and I don't intend to," Alex Beehler, assistant secretary of the Army for installations, energy, and environment, said.

Todd Mellon, the acting principal deputy assistant secretary of the Navy for energy, installations, and environment, added that it's "ultimately EPA's call to set what those standards are. The Navy is fully on board."

Doug Lamborn (R-Colo.), the top Republican on the House Armed Services' Subcommittee on Readiness, said he accepted the officials' answers and "didn't have any reason to question that."

Lamborn's district contains Fountain and Security, two civilian towns located near a military base that recently discovered very high levels of PFAS in their drinking water supplies. He told Bloomberg Environment that he's pleased with the Pentagon's progress on addressing this issue, especially its work toward looking for a replacement for PFAS.

E&E News

Judges weigh EPA freeze on power plant discharge limits

<https://www.eenews.net/greenwire/stories/1060259367/search?keyword=EPA>

Ellen Gilmer

Posted: May 2, 2019

Chief Judge Edith Jones was unimpressed with environmentalists' arguments yesterday that the Trump administration skirted the law when it let power plants off the hook for certain wastewater standards.

Jones, a conservative stalwart on the 5th U.S. Circuit Court of Appeals, described the Trump EPA's decision to delay some discharge limitation guidelines as a "rational agency process" in line with its authority.

"Why is that arbitrary and capricious?" she asked skeptically.

"Because Congress didn't give EPA that authority and hasn't given EPA that authority in any environmental statute," Sierra Club lawyer Matthew Gerhart responded.

The exchange punctuated oral arguments before a three-judge panel yesterday as the Sierra Club, Clean Water Action and other groups argued that EPA should be required to revive near-term compliance deadlines for certain waste streams covered by the Obama-era effluent rule.

EPA finalized the regulation in 2015 to crack down on what Gerhart described as "the largest industrial source of toxic water pollution in the country."

Power plants release wastewater that includes mercury, arsenic and other pollutants that can harm drinking water, fish and other wildlife. EPA regulates those discharges under the Clean Water Act and is required to frequently review standards for different waste streams.

The 2015 rule was the first update to the standards in more than 30 years. When President Trump took office, then-EPA Administrator Scott Pruitt quickly took action to pause compliance deadlines for the rule.

Environmental groups sued over the administrative move, and EPA followed up with a detailed regulation that zeroed in on dates for the two largest power plant waste streams: bottom ash and scrubber wastewater.

Initial compliance deadlines for both were pushed from November 2018 to November 2020.

EPA defended its approach during oral arguments yesterday, explaining that it had serious concerns about the achievability and affordability of certain technical requirements.

Jones, a Reagan appointee, led the day's questioning and appeared receptive to the agency's position that it shouldn't force compliance with a standard it's rethinking.

"How does EPA revise if it can't tell regulated parties not to comply?" she said.

The environmental litigants maintained that EPA ignored the Clean Water Act's requirement that the agency consider multiple factors before revising effluent limitations.

Judges Patrick Higginbotham, a Reagan appointee, and Gregg Costa, an Obama appointee, also sat on the panel. A decision is expected in the next few months.

Just a few weeks ago, a separate panel of 5th Circuit judges ruled that EPA needed to strengthen its effluent limitations for two other waste streams included in the 2015 rule (*E&E News PM*, April 12).

Inside EPA

EAB orders new environmental justice review of contested UIC permit

<https://insideepa.com/daily-feed/eab-orders-new-environmental-justice-review-contested-uic-permit>

Staff

Posted: May 2, 2019

EPA's Environmental Appeals Board (EAB) is ordering the agency to revisit a Safe Drinking Water Act (SDWA) permit for underground injections at a hydraulic fracturing operation in Michigan, agreeing with a local resident that EPA failed to respond to environmental justice (EJ) and safety concerns raised in public comments.

However, the April 29 decision by a unanimous three-judge EAB panel grants only a limited remand of the SDWA underground injection control (UIC) permit provisions that the petitioner targeted, and leaves the door open for EPA to simply craft a more-complete response to comments that would reaffirm the 2018 permit limits it set for the Muskegon Development Company's enhanced oil recovery well near Clare County, MI.

"First, the current state of the Region's response to comments document substantially impedes a determination as to whether the Region considered and meaningfully responded to certain comments and so exercised its considered judgment in issuing the Permit. Second, the Board is unable to determine whether the Region appropriately evaluated the environmental justice implications of the permitting action," reads the board's decision, which was authored by Judge Aaron P. Avila and also signed by Judges Mary Kay Lynch and Mary Beth Ward.

The petitioner, Clare area resident Emerson Joseph Addison III, argued to EAB that the agency failed to show how it considered the impacts of Muskegon's EOR on vulnerable populations, especially poor residents, and says its response to public comments on potential harms to drinking water quality was broadly inadequate.

EAB's decision could set a new precedent requiring the agency to go into more depth on how its permit decisions impact EJ communities. The panel's decision is only binding for future EAB cases, but if the agency files an appeal it would go to a federal appellate court with the potential for a decision that would apply at the circuit court level -- in this case the U.S. Court of Appeals for 6th Circuit that covers Kentucky, Michigan, Ohio and Tennessee.

"Specifically, [EPA] needed to then explain whether it considered the fact that 56% of the population is low income in its permitting action and whether and how it chose to exercise its discretion under the UIC permitting program through enhanced public participation and use of its UIC regulatory omnibus authority. The Board therefore remands the Permit for the Region to provide that explanation . . . and to take further action, if appropriate, in light of that explanation," the opinion says.

While the EAB panel backed some of Addison's claims, the judges stopped short of holding that any of the permit terms should be strengthened. Instead, they found that EPA failed to provide responses to three of the comments it identified as "in scope" for its review, and to show how EJ considerations factored into the permit.

Of the three comments that received no response, Avila writes, "To reiterate, the Region is not required to give individual point-by-point responses to each comment and the Board has upheld permits where unified responses were given to groups of related comments so long as the responses addressed the essence of each significant issue raised. However, whatever the Region's approach, the response to comments document must demonstrate that the Region considered and responded to all significant comments."

InsideEPA

Water Groups Propose Framework For Revised EPA 'Affordability' Policy

<https://insideepa.com/daily-news/water-groups-propose-framework-revised-epa-affordability-policy>

Lara Beaven

Posted: May 2, 2019

Drinking water and wastewater utilities are proposing a new framework for EPA to use in its effort to revise guidance on measuring communities' ability to afford new water infrastructure projects that are often required in enforcement settlements but can prove costly, especially for communities with a large number of low-income residents.

In a [detailed report](#) sent to EPA wastewater chief Andrew Sawyers April 30, the American Water Works Association, National Association of Clean Water Agencies and the Water Environment Federation seek to respond to advice in a congressionally mandated analysis that highlighted shortcomings in the agency's current approach, especially its reliance on a percentage of median household income (MHI) as a metric for determining affordability.

The report describes a methodology the agency could adopt to measure both household and community affordability. The core elements of the proposed framework include recognizing that individual households bear the total cost of all the water services they receive; no one metric can serve as a bright line for when water service is affordable for individual households due to growing income disparities; and the implications of affordability for water policy requires both considering the capacity of low-income households to afford water service and the community's ability to reliably provide service and make necessary improvements over time, the groups say in a [cover letter](#) to their report.

The proposed framework is based on three principles -- that it should reflect drinking water, wastewater and stormwater service costs; reflect the households that are most economically challenged; and reflect local essential costs of living.

EPA generally considers community affordability when it enforces Clean Water Act and Safe Drinking Water Act requirements that result in municipal entities needing to upgrade their infrastructure.

The agency has generally relied on several guidances, including a 1997 document that was developed to assess municipalities' ability to pay for infrastructure upgrades to prevent combined sewer overflows (CSOs), but which has since been used in other areas.

Sawyers [announced in 2018](#) the agency was exploring how the guidance should be changed following a 2017 report from the National Academy of Public Administration (NAPA) that responded to Senate Appropriations Committee report language attached to a fiscal year 2016 spending bill.

And EPA staff said last summer the agency was exploring several possible [new metrics](#) of affordability.

One of the most controversial aspects of the current EPA policy is its reliance on MHI as an affordability metric. The CSO policy developed by the Office of Wastewater Management, a 1995 water quality standards economic guidance used by the Office of Science and Technology, and a 1998 affordability guidance used by the drinking water office all rely on 2 percent of MHI as an affordability metric.

Poor Indicator

But the NAPA report and other literature have said MHI is a poor indicator of economic distress, bearing little relationship to poverty or other measures of economic need within a community.

The CSO policy uses a two-phase approach to assess financial capability. The first phase looks at impacts to individual households using a residential indicator (RI), which examines a snapshot of the average household wastewater cost as a percent of MHI and compares it to a 2 percent threshold. The second phase evaluates several community-level metrics, including debt and financial conditions, to develop a financial capability index (FCI). The RI and FCI results are then combined and the utility's financial capability is categorized as low, medium or high burden. The results are then used to inform the development of a regulatory compliance schedule.

The water groups' suggested framework also includes household and community components but differs in the way each is calculated and the way the two components are assessed cumulatively.

EPA's guidance specifies a preliminary screening using the RI and a secondary screening using financial capability measures if the primary screening results in a "high financial impact" RI score. But in practice, the water groups say, most utilities have completed both analyses regardless of the results of the RI calculation and evaluation.

"Though the existing EPA scoring matrix provides a guide for regulators to generate evidence for schedule relief determinations, it is perceived by many to be an inflexible and overly simplistic method of making such determinations," the report says.

The water groups recommend EPA consider both household affordability and financial capability together in the context of the cumulative financial burden associated with all available water services.

"It is important to acknowledge that the authors have not found any household affordability metric that is 'perfect in every respect,'" the report says. "Every candidate metric that was considered has some limitations relative to one or more of the evaluation criteria. Nonetheless, several alternatives were identified that are very strong and suitable candidates for household affordability metrics -- either individually, or as a composite -- because they achieve the best balance of the most critical criteria and considerations."

The groups' recommended household affordability assessment methodology contains two components. The household burden indicator (HBI) is defined as the combined basic water service costs as a percentage of the 20th percentile household income. This is then combined with the poverty prevalence indicator (PPI), which is defined as the percentage of community households at or below 200 percent of the federal poverty level.

The HBI measures the economic burden that relatively low-income households in that community face in paying their water services bills while the PPI measures the degree to which poverty is prevalent in the community. The water groups recommend that a matrix approach be used to allow the results of both the HBI and PPI to be jointly interpreted.

"Households at and below the 20th percentile typically reflect those households that are the most economically challenged members of the community, more so than MHI," the report says. "The 20th percentile is generally considered the demarcation between low income and middle-class households," noting that many assistance programs have eligibility cut-offs at or near the 20th percentile, and the data used to define the 20th percentile household income is readily available from the U.S. Census.

The water groups acknowledge that accounting for total basic water cost adds some complexity to the required analysis, compared to EPA's current approach, and may require coordination with multiple utility agencies and organizations to accurately quantify the total cost of all water services within a community. Additionally, there may be circumstances that complicate compiling an aggregate basic water service cost for a community, such as where service area boundaries do not coincide well, the report says. But the groups argue the added complexity allows for a more comprehensive assessment of household affordability.

Financial Capability Assessment

The second part of the proposed framework is the financial capability assessment, which consists of using long-term cash-flow modeling to inform how and when capital improvements may be implemented within the financial capability of a utility, the report says.

"A financial plan, or cash flow forecast, is a relatively straight forward way of projecting the financial viability of a utility. The cash-flow forecast should include projections of annual revenues, utility rates, operation and maintenance expenses, capital needs, debt service requirements, and key fiscal policy measures, such as debt service coverage and projections of fund cash balances," the report says.

The water groups note that this approach does not render a specific finding that compliance requirements impose a specific level of burden and thereby provide a basis for scheduling. "Rather, it focuses directly on the matter of defining a mutually agreeable compliance schedule (and the procedures for later modifications thereto) that will fit within a utility's or community's financial capabilities," the report says.

Permittees should not be required to demonstrate a high burden to secure a manageable compliance schedule nor should regulators be prompted to impose compliance requirements based on what would bring a permittee to a high burden threshold, the report says.

Instead, the immediate and sustained focus should be related to what improvements render the greatest public health and environmental benefits that may be financed within the entity's financial limitations, the report says. "In other words, household affordability and a utility's financial capability provides limitations on what can be done, or at least the pace at which it can be done, to protect public health." -- *Lara Beaven* (lbeaven@iwpnews.com)

Related News | [Water](#) |

JDSUPRA**Waters of the United States/U.S. EPA Proposed Rule: Arkansas Game and Fish Commission Comments**

<https://www.jdsupra.com/legalnews/waters-of-the-united-states-u-s-epa-81619/>

Mitchell Williams P.L.L.C.

Posted: May 2, 2019

The United States Environmental Protection Agency ("EPA") has received thousands of comments in the Administrative Docket for the proposed revisions to the Clean Water Act definition of Waters of the United States ("WOTUS"). See Docket No. : EPA-HQ-OW-2018-0149.

A few of the submitted comments have originated from organizations or entities located in the State of Arkansas

EPA and the United States Corps of Engineers ("Corps") proposed revisions to WOTUS on December 11, 2018. Further, they had previously rescinded the Obama era revision clarification of WOTUS

The definition of WOTUS is arguably one of the three critical jurisdictional terms of the Clean Water Act. Its importance is magnified by the fact it is also relevant to non-National Pollution Discharge Elimination System programs such as:

- Section 404 of the Clean Water Act Wetland Permits
- Section 311 Oil/Hazardous Substance Release Requirements
- Clean Water Act Spill Prevention Control and Countermeasure Regulations

The December 11th proposed changes to the rules were briefly delineated here. (See previous post [here](#).)

One of the Arkansas organizations that submitted comments on the proposed rule is the Arkansas Game and Fish Commission ("AGFC"). The comments submitted by AGFC were signed by Pat Fitts, Director.

The AGFC comments note that its staff reviewed the proposed rule and initially states its appreciation for the effort to grant:

. . .State and tribal authority over their own land and water resources.

It is further stated that while Arkansas's waters of the state law is broad, AGFC currently relies "on the federal process to review proposed impacts to our streams and wetlands because we do not have the funding or staff to assume this responsibility."

Additional points raised by AGFC include:

- By omitting ephemeral streams the United States Environmental Protection Agency and Corps of Engineers (collectively "EPA") would actually eliminate the opportunity for the state of Arkansas to make decisions about the discharge of pollutants into their waters through Section 401 of the Clean Water Act certification process. (i.e., the state of Arkansas would not be able to replicate this process with existing state resources).
- EPA's economic analysis did not consider the cost to states for assuming greater responsibility in administering the regulatory program established by the proposed rule.
- Funding is not identified for the responsibilities imposed upon the states to establish geospatial data sets of waters of the United States
- A comment period extension is requested.

- Referencing the proposed concept that wetlands separated by dikes or barriers are not jurisdictional because they do not have a direct hydrologic surface connection is possibly rebutted by a reference to relief wells installed by the Corps of Engineers outside levees along the Mississippi Rivers and Tributaries project.
- Wetlands should be included within the 100 year floodplain jurisdiction because they regularly contribute to the chemical, biological, and physical integrity of the regulated water.
- The scientific basis for the proposed rule to not include water. . .that flows only in response to precipitation; groundwater,. . . is questioned.
- Failure to consider backwater flooded streams and their capacity to store floodwater, cuts against against their ability to reduce flood risk.
- Requests that any waterway that was ever a part of a Congressionally authorized Civil Works project be considered jurisdictional.

A copy of the comments can be found [here](#).

WaterWorld

EPA Announces Availability of \$87M To Improve Drinking Water For Schools, Small and Disadvantaged Communities

<https://www.waterworld.com/articles/2019/05/epa-announces-availability-of-87m-to-improve-drinking-water-for-schools-small-and-disadvantaged-communities.html>

Staff

Posted: May 2, 2019

SAN FRANCISCO, CA, MAY 2, 2019 -- The U.S. Environmental Protection Agency (EPA) announced the availability of nearly \$87 million in grant funding to assist states, tribes, and territories with improving drinking water.

The following funding amounts are available in the Pacific Southwest: Arizona is eligible to receive \$1,385,000; California is eligible to receive \$7,648,000; Guam and the Commonwealth of Northern Mariana Islands are eligible to receive \$150,000 each; American Samoa is eligible to receive \$154,000; Hawaii is eligible to receive \$554,000; Nevada is eligible to receive \$749,000; and Nationally, American Indian and Alaska Native water systems are eligible to receive \$3,690,000. "EPA is committed to ensuring all Americans, regardless of their zip code, have access to safe and clean drinking water," said EPA Administrator Andrew Wheeler. "With these grants, EPA is fulfilling its core mission of providing states, tribes, and territories with the resources needed to protect children from lead exposure and other contaminants and ensure all American families have safe drinking water."

States, tribes, and territories are eligible to receive funding from two new EPA drinking water grant programs established by the Water Infrastructure Improvements for the Nation Act (WIIN):

Under EPA's new Voluntary Lead Testing in Schools and Child Care grant program, EPA will award \$43.7 million in grants to fund testing for lead in drinking water at schools and child care programs. Testing results carried out using grant funds must be made publicly available.

Under EPA's new Assistance for Small and Disadvantaged Communities grant program, EPA will award \$42.8 million in grants to support underserved communities with bringing public drinking water systems into compliance with the Safe Drinking Water Act. Funding can also be used for conducting household water quality testing, including testing for unregulated contaminants.